

**August 22, 2006**

SUBJECT: **2006-0467** - Appeal of a decision of the Planning Commission to deny an application located at **1386 Lewiston Drive** (near Cascade Dr.) in an R-1 (Low Density Residential) Zoning District.

Motion Variance from Sunnyvale Municipal Code section 19.48.020 for a new fence greater than three feet in the corner and driveway vision triangles.

REPORT IN BRIEF

Existing Site Conditions Single-family home

Surrounding Land Uses

North Single-family residential

South Single-family residential

East Single-family residential

West Single-family residential

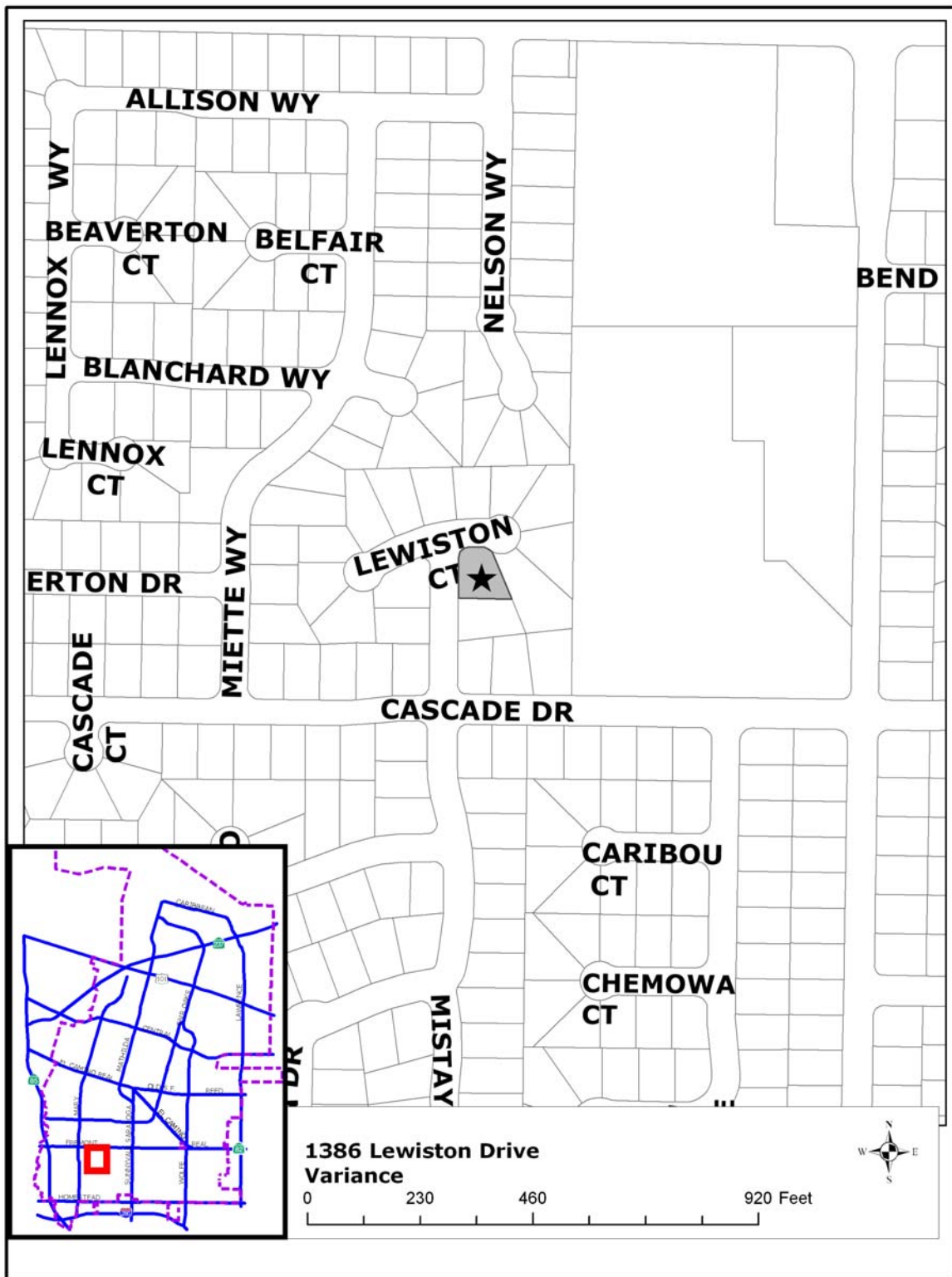
Issues Encroachment into the corner and driveway vision triangles

Environmental Status A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

Administrative Hearing Officer's Action Denied Variance application

Planning Commission's Action Denied the appeal, upholding the decision to deny Variance application

Staff Recommendation Deny the appeal and uphold the decision of the Planning Commission to deny the Variance



PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Low Density Residential	Same	Low Density Residential
Zoning District	R-1	Same	R-1
Lot Size (s.f.)	8,668	Same	8000 min.
No. of Units	1	Same	1 max.
Fence Height in the 40' Corner Vision Triangle			
★ • Fence	N/A	5' 6"	3'
Fence Height in the 10' Driveway Vision Triangle			
★ • Fence	N/A	5' 6"	3'

★ Starred items indicate deviations from Sunnyvale Municipal Code requirements.

ANALYSIS**Description of Proposed Project**

The applicant is proposing a 5' 6" high wrought iron and masonry fence into the corner and driveway vision triangles of his property. The fence is on the property line along Lewiston Drive and Courts, immediately adjacent to the back of the sidewalk. This fence will enclose the front yard area and connect to an existing 7' high wood fence. This 7' high wood fence encloses the reducible front yard area. Within the proposed iron and masonry fence, there is a double gate proposed near the street corner, intended to allow access to the reducible front and rear yards.

As part of this application, the applicant is proposing to remove the 6' high wood fence that currently is built between the house and the 7' high front yard fence.

Background

Previous Actions on the Site: This application was reviewed at the June 14, 2006 Administrative Hearing and was denied. The applicant appealed the decision to the Planning Commission. The Commission heard the application on July 10, 2006 and denied the appeal 7-0.

Appeal: The decision was appealed to the City Council by Councilmember Moylan. He stated his reasoning for appeal was the applicant presented information to the Planning Commission and staff did not have sufficient time to respond. The appellant noted three other variances for similar situations.

Councilmember Moylan wanted to give staff the chance to research these cases and prepare a response, as well as visit the site himself to determine if the required findings can be made.

The following table summarizes previous planning applications related to the subject site.

File Number	Brief Description	Hearing/Decision	Date
2002-0285	556 sf addition for new attached boat garage	Design Review/ Approved	4/16/2002
1998-0197	7' high fence in the reducible front yard	MPP/ Approved	8/14/1997

Environmental Review

A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 1 Categorical Exemption includes minor alterations to existing facilities.

Variance

Use: The fence is intended to provide privacy and security for the applicant as well as enhance the visual appearance of the front yard.

Design of the Fence: The fence height consists of approximately:

- 2' of brick/block masonry on the ground;
- 5' 6" high masonry columns spaced every 7' 6";
- 3' 6" iron railings mounted between the masonry features.

The fence will be iron railings only within the corner vision triangle areas. The height will be comparable in height to the mixed material portion of the fence. Attachment D shows a photo simulation of the fence and gate.

The following Guidelines were considered in analysis of the project site design:

Design Policy or Guideline (Site Layout)	Comments
<i>3.11 (G) Landscaping Fencing along the front property lines and along side property lines within front yard setback areas should not exceed three feet in height.</i>	The applicant is proposing a fence of 5'6" in the front yard area.

Vision Triangle: Sunnyvale Municipal Code Section 19.34.060 requires that 40' vision triangles be maintained at all intersections and 10' driveway triangles be maintained clear of obstruction over 3' high. This is to promote safety and reduce the potential for accidents and injury by providing drivers a better view of pedestrian, bicycle, and vehicular traffic while approaching a corner.

The code requirement is rooted in general traffic engineering practice. The intent is to require that all intersections have an unobstructed sight distance in all directions. The sight triangles must be free of obstructions which might interfere with the driver's ability to see other vehicles, pedestrians or bicyclists approaching on the cross street and to ensure that vehicles have sufficient sight distance to make appropriate decisions on whether to slow, stop, or proceed through the intersection area.

Sunnyvale does not have a policy that would allow for a sliding scale or reduction in the required vision triangles. Some cities allow sight triangle encroachments based on maximum speed limits, number of affected housing units, fence design, etc. This type of flexibility is not available for City staff to utilize in the Sunnyvale Municipal Code.

Previous Variance Application Approvals (Appeal Information): During the review of this application, staff searched past records (to year 2000) for Variance application approvals of fences in the vision triangle areas. The intent was to determine how many other vision triangle variances, if any, have been approved and what findings were made to support the request.

The result was that only three previous applications could be found. They are as follows:

Address	Brief Description	Hearing/Decision	Date
365 Iowa Ave	Fence in the corner vision triangle area	Administrative Hearing/ Approved	11-13-2002
718 Santa Rosa	4' fence in driveway vision triangle area	Administrative Hearing/ Approved	1-15-2003
722 Santa Rosa	4' fence in driveway vision triangle area	Administrative Hearing/ Approved	1-15-2003

The Iowa Avenue application was for a 7'9" high fence in the front yard and in the vision triangle. The following is a summary from the meeting minutes in Attachment K:

The Planning Officer made a field inspection...which revealed that the existing fence impairs a clear view through the vision triangle, however, the additional height of the fence exacerbates the problem, particularly for

vehicles traveling east on Iowa, that would otherwise be able to see the top of vehicles traveling south on Flora Vista. Because of the slow travel speeds on these roads the current obstruction has not been a problem. The site inspection further illustrated that the reducible front yard along Flora Vista is an appropriate location for a fenced, private, yard area.

Therefore, in order to provide privacy and to protect traffic safety, the Use Permit for a higher fence is approved with modified findings and with the conditions of approval recommended by staff with modifications.

The Hearing Officer was able to make the findings for the Use Permit:

- 1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale. The modified fence location strikes a balance between "protecting the neighborhood aesthetic and providing safe streets" and providing convenient private open space.*
- 2. The proposed use is desirable, and will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the Zoning District.*

The Santa Rosa applications were four foot fences in driveway vision triangle areas on adjacent parcels, and the fences were open wood designs. The Administrative Hearing Officer at the time stated they were able to make the required Variance findings. The following is a summary from the meeting minutes in Attachment L.

Ms. Ryan noted that it is important to realize that there could be fences in the neighborhood that were built under previous regulations where there was not a requirement to have the 10 foot vision triangle. Ms. Ryan made a comment to staff to make sure that the information provided to people adding fences is being delivered correctly, understanding there are both Building and Planning permits.

Ms. Ryan was able to make all three Findings for the Variance by stating the following: 1) There are a number of 4 foot high fences in the driveway vision triangle fences and it does not appear to be an increase in Public Safety accidents. She noted it is an open fence and that Traffic Engineering staff had indicated prior to the meeting that there is visibility. The use shows evidence of being unusual because it is not a solid fence. 2) The use itself is extraordinary because it is open and therefore not detrimental to the public welfare if visibility is available. 3) It meets the intent of the ordinance by not granting special privileges not enjoyed by other surrounding property owners.

Compliance with Development Standards/Guidelines: The proposed fence meets all the development standards except for the height requirement in the vision triangles.

Expected Impact on the Surroundings: Staff finds that the fence would not have a negative aesthetic impact on the neighborhood, due to its quality and design. Staff does not believe an open wrought iron fence will create a fortress effect or overly enclose the front yard from a streetscape perspective. Wrought iron fences generally produce an open visual appearance into the front yard area but they may not provide full visibility when viewed from certain angles.

Applicant's Justification: The applicant submitted a letter of justification with the following reasons for the project:

1. *Our home is located on the right side in a quiet cul-de-sac*
2. *The cars that are traveling in our street are not allowed to go fast as per the cul-de-sac speed limit*
3. *There are only 4 houses in the cul-de-sac of which all of them reviewed the plans and approved our proposed fence*
4. *The distance between the proposed fence to the street is 12 feet; therefore, there is sufficient line of sight for traffic as the cars can not make the right turn before physically passing the proposed fence.*
5. *When looking at the Photoshop illustration (included with the Variance application), one can clearly see that there is complete visibility of the other side of the street.*
6. *The proposed fence is going to be a see-through decorative metal (see attached plans)*
7. *There will be no supporting cement posts in the curvature area to further assure line of sight*
8. *The reason for the height of the fence is security & safety! We have a spa in our back yard and we do not want kids to be able to easily jump the fence when we are away and use our spa; we are mainly concerned about accidents and are trying to think ahead and prevent any possibility of such unfortunate event!*
9. *The proposed fence will enable us to demolish the existing wooden fence that is facing the front of Lewiston Dr. (from the house to the street); this will enhance & beautify the looks of the neighborhood and therefore raise everyone's property value*

Fiscal Impact

No fiscal impacts other than normal fees and taxes are expected.

Public Contact

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none">• Published in the <i>Sun</i> newspaper• Posted on the site• 21 notices mailed to adjacent property owners and residents of the project site	<ul style="list-style-type: none">• Posted on the City of Sunnyvale's Website• Provided at the Reference Section of the City of Sunnyvale's Public Library	<ul style="list-style-type: none">• Posted on the City's official notice bulletin board• City of Sunnyvale's Website

Administrative Hearing: On June 12, 2006, the Administrative Hearing Officer considered the Variance application and denied the request. After presentations by staff and the applicant, the Hearing Officer stated that the required findings could not be made and that granting the Variance would constitute a special privilege not enjoyed by similar property owners. (See Attachment I for the Administrative Hearing Minutes). The applicant appealed this decision on June 12, 2006.

Planning Commission Hearing: The application was heard before the Planning Commission at the July 10, 2006 meeting. At the hearing, the Commission discussed the Variance application issues including the vision triangle, traffic, alternative designs, and other instances where fence Variances were approved in Sunnyvale. The Commission ultimately recommended to deny the appeal, stating that they were unable to make the required findings. Specifically, the Commission stated they could not identify a hardship or a unique circumstance in this case. (See Attachment J for the Administrative Hearing Minutes). This decision was appealed on July 11, 2006.

Findings and General Plan Goals: In order to grant the Variance, three findings must be made (See Attachment A, Recommended Findings). Staff cannot make all of the findings required for the Variance.

Recommended Conditions of Approval: If the Council grants the appeal and approves the Variance, the Recommended Conditions of Approval are located in Attachment B.

Alternatives

1. Deny the appeal and uphold the decision of the Planning Commission to deny the Variance.
2. Grant the appeal and approve the Variance with attached conditions.
3. Grant the appeal and approve the Variance with modified conditions.

Recommendation

Staff recommends Alternative #1.

Staff acknowledges there are some circumstances at the subject property that would minimize some of the potential negative impacts the fence might have to safety in the area. These are as follows:

- Street intersection is a “T”, rather than a continuing street;
- The speed limit is the minimum in the City at 25mph;
- The average speed in the area is much less than the minimum, estimated at about 15mph;
- Lewiston Drive and Court are very wide streets;
- There only five homes fronting on the affected corner, so there are very low traffic volumes;
- The proposed fence is an open design, allowing visibility through the fence.

The difficulty in recommending approving the Variance request lies in two facts. First, while the particulars of the property minimize potential safety impacts, they are not totally eliminated. Therefore, a safety impact, although minor, will be created. Second, this property is not a unique or extraordinary circumstance in Sunnyvale. There are many similar corner lot configurations in the City with a similar set of circumstances. Therefore, granting this Variance would make it more difficult to deny similar requests throughout the City.

Comments of Appeal: Although there have been three other Variance applications approved for fences in vision triangles, there have been numerous others that have been denied or dissuaded from applying for a Variance. Staff believes the three previous applications have unique circumstances and were approved based on their individual conditions. Staff does not believe they can be used as a comparison in order to approve the subject variance request.

Reviewed by:

Trudi Ryan, Planning Officer

Reviewed by:

Robert Paternoster
Director, Community Development Department

Prepared by: Steve Lynch, Project Planner

Approved by:

Amy Chan
City Manager

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Applicant's Justifications
- D. Petition Letter from Applicant
- E. Letter from neighbor
- F. Photos of Site
- G. Architecture Plans
- H. Letter from neighbor
- I. Administrative Hearing meeting minutes from June 12, 2006
- J. Planning Commission meeting minutes from July 10, 2006
- K. Administrative Hearing Minutes from November 13, 2002
- L. Administrative Hearing Minutes from January 15, 2003

Recommended Findings - Variance

1. Because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner of privileges enjoyed by other properties in the vicinity and within the same zoning district.

Staff cannot find that this property/use has exceptional or extraordinary circumstances. There are many similar corner lot configuration in the City with a similar set of circumstances.

2. The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the same zoning district.

Staff finds that the fence would not have a negative aesthetic impact on the neighborhood, due to its quality and design. Staff does not believe an open rod iron fence will create a fortress effect or overly enclosed front yard from a streetscape perspective. The Traffic and Planning Divisions have reviewed the application and found that the particulars to the property do minimize potential safety impacts, but the impacts are not totally eliminated. Therefore, a safety impact, although minor, will be created.

3. Upon granting of the Variance, the intent and purpose of the ordinance will still be served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district.

Staff finds that the granting of a Variance would constitute a special privilege since other similar property owners have been denied similar requests.

Recommended Conditions of Approval - Variance

In addition to complying with all applicable City, County, State, and Federal Statutes, Codes, Ordinances and Resolutions, the Permittee expressly accepts and agrees to comply with the following Variance Modifications.

1. Obtain a Building Permit for the fence in this permit.
2. The Variance Permit for the use shall expire if the use is discontinued for a period of one year or more.
3. The Variance shall be null and void two years from the date of approval by the final review authority at a public hearing if the approval is not exercised, unless a written request for an extension is received prior to expiration date.
4. Project shall be in conformance with the plans approved at the public hearing(s). Minor changes may be approved by the Director of Community Development, major changes may be approved at a public hearing.
5. A Stop sign must be installed at the expense of the applicant at the south east corner of the intersection of Lewiston Drive and Court.
6. The 6' wood fence between the front and rear yard shall be removed (not the 7' fence adjacent to Lewiston Court).
7. The fence design shall be open wrought iron only; no masonry columns are permitted. A masonry base of 2' or less is permitted.
8. After installation, all landscaping shall thereafter be maintained in a neat, clean, and healthful condition.